

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDDIE JAMES LEE, SR.,

Plaintiff,

-vs-

9:04-CV-382

DAVID DELFAVERO,

Defendant.

Thomas J. McAvoy, D.J.

DECISION and ORDER

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(c) of the Local Rules of the Northern District of New York. Plaintiff has filed objections to the Report-Recommendation dated September 6, 2005.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court reviews the record *de novo*. See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The Court may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

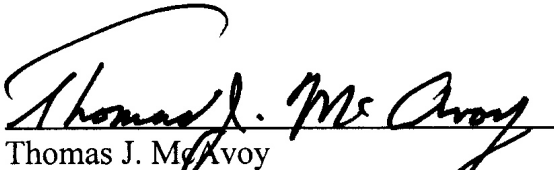
Having considered the record *de novo*, the Court accepts and adopts the recommendations of the Report-Recommendation in their entirety. Magistrate Judge Peebles found that Plaintiff failed to allege that Defendant had any personal involvement in the alleged constitutional injury. In his objections, Plaintiff merely states that Defendant should be held responsible in his supervisory role. As Judge Peebles explained, however, the general rule is that there is no respondeat superior liability in claims brought under § 1983. Nothing in the Complaint brings this case within any of the exceptions to this general rule.

Plaintiff did not object to Judge Peebles' findings that Plaintiff failed to plead the type of medical condition that would warrant protection under the constitutional right of privacy or that Plaintiff failed to plead physical injury as required by 42 U.S.C. § 1997(e). Upon *de novo* review, this Court agrees with Judge Peebles' determinations.

For the foregoing reasons, Defendant's motion to dismiss is GRANTED and Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: September 28, 2005


Thomas J. McAvoy
Senior, U.S. District Judge